

TRANSSCRIPT SERIAL# 03-027280
BOX # Seawat 1
SYS. ID#: _____

pp. 1-53

08-CV-1359

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2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF KINGS - CRIMINAL TERM - PART 39

X

4 THE PEOPLE OF THE STATE OF NEW YORK, :

:

5 -against- :

:

6 JABBAR COLLINS, :

:

7 DEFENDANT. :

X

8 Indict. No. 2884/94
9 WADE HEARING

360 Adams Street
Brooklyn, New York

10 March 2, 1995

11 B E F O R E:

12 HONORABLE FRANCIS X. EGITTO,
13 Justice.

14

15 A P P E A R A N C E S:

16 OFFICE OF CHARLES HYNES, ESQ.
17 DISTRICT ATTORNEY - KINGS COUNTY
18 Attorney for the People
19 BY: MICHAEL VECCHIONE, ESQ.,
20 STACEY FRASCOGNA, ESQ.,
21 -and-
22 CHARLES POSNER, ESQ.,
23 Assistant District Attorneys

24 MICHAEL HARRISON, ESQ.,
25 Attorney for the Defendant
401 Broadway
New York, New York

24 _____ / v
25 DONNA MANNING, RPR
OFFICIAL COURT REPORTER

24 TRANSCRIPT SERIAL# _____
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THE COURT CLERK: No. 5 on the calendar,
indictment 2884 of '94, Jabbar Collins.

4 Counsel, please put your appearances on the
5 record.

6 MR. HARRISON: I am Michael Harrison, 401
7 Broadway, for Mr. Collins.

8 Good morning, your Honor.

9 MR. VECCHIONE: Office of the District
10 Attorney by Michael Vecchione, Stacey Frascogna
11 and Charles Posner.

12 | * * * * *

13 MR. HARRISON: Your Honor, I have Mrs. -- may
14 I approach?

15 | THE COURT: Sure.

18 THE COURT: Just for the record, the
19 defendant, Mr. Collins, is on his way up.

20 Mr. Harrison, are all the witnesses out of
21 the courtroom?

22 MR. VECCHIONE: Mr. Harrison, the Judge is
23 talking.

24 MR. HARRISON: I am sorry

25 THE COURT: I am just saying Mr. Collins is

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on his way up, and I am directing the D.A. and all
of you that all witnesses are to be outside of the
courtroom, outside of hearing what is going on.

5 MR. HARRISON: Understood, your Honor.

THE COURT: By the way, you told me the defendant's mother is here.

8 MR. HARRISON: That is correct.

13 MR. HARRISON: Yes, your Honor.

14 THE COURT: Let the record show that
15 Mr. Jabbar Collins is now in the courtroom.

16 THE COURT CLERK: This is a recall of number
17 5, 2884 of '94. Jabbar Collins.

20 MR. VECCHIONE: Yes

THE COURT CLERK: Is the defendant ready?

22 MR. HARRISON: Yes.

THE COURT CLERK: All right. Let's go.

24 MR. VECCHIONE: Judge, just before we begin
25 the hearing, for the purpose of Rosario for the

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2 purposes of this hearing, I have turned over to
3 Mr. Harrison DD-5s that pertain to the photo
4 identifications, and the lineup identifications by
5 two witnesses in this case, as well as the
6 detective's notes pertaining to the two
7 identifications of the photo arrays.

8 There are no notes for the lineup
9 identifications other than what is written on the
10 lineup reports, and I am turning over two lineup
11 reports, as well as the detective's grand jury
12 minutes that deal with the identification
13 procedures.

14 THE COURT: Very well.

15 MR. VECCHIONE: Next, I am turning over
16 additional discovery material. I had learned
17 during the course of the investigation that there
18 was some laboratory analysis done on some things.

19 I had spoken to Mr. Harrison several weeks
20 ago. I left this for him on the front desk.
21 Mr. Harrison did not pick it up and said to bring
22 it to court when we begin. I am turning that
23 material over to him as well.

24 MR. HARRISON: That's correct, your Honor.

25 MR. VECCHIONE: The People are ready.

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Detective Hernandez, who is the only witness for the hearing, is present in court.

4 MR. HARRISON: Your Honor, if I may.

5 THE COURT: Do you acknowledge receipt of
6 that?

7 MR. HARRISON: I acknowledge receipt.

8 If I may, your Honor, the only thing that I
9 want to have clear from the defense posture is
10 that there are no statements, at least that I am
11 aware of, is that correct?

12 THE COURT: By the defendant?

13 MR. HARRISON: Yes, your Honor.

14 THE COURT: Any statements by the defendant?

15 MR. VECCHIONE: No, Judge.

THE COURT: That you intend to introduce?

17 MR. VECCHIONE: No.

18 MR. HARRISON: Just so I have that clear.

23 MR. HARRISON: I didn't imply anything. Just
24 for my own clarification.

THE COURT: Anything else?

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2 MR. HARRISON: Yes.

3 THE COURT: Are you 18-B?

4 MR. HARRISON: Yes, I am. I would like a
5 transcript of the hearing. I ask the Court that I
6 may order, in light of the fact this is homicide,
7 a daily transcript.

8 THE COURT: So ordered.

9 MR. VECCHIONE: And the People wish a copy as
10 well, Judge.

11 THE COURT: And make one for the Court.

All right, let's go.

13 MR. VECCHIONE: Detective Hernandez.

14 THE COURT OFFICER: Detective Hernandez.

15 JOSE HERNANDEZ,

16 called as a witness, having been first duly sworn
17 by the Clerk of the Court, was examined and testified
18 as follows:

19 THE COURT CLERK: Please be seated.

20 Detective. State your name for the record,
21 spelling your last name. Give us your shield
22 number and command.

1 Hernandez - Direct/Veccione

2 THE COURT CLERK: Thank you.

3 THE COURT: You may proceed.

4 MR. VECCHIONE: Thank you.

5 DIRECT EXAMINATION

6 BY MR. VECCHIONE:

7 Q Detective Hernandez, you have been a member of the
8 police force for how many years, sir?

9 A For approximately ten years, sir.

10 Q You are now assigned to the 90 Precinct?

11 A Yes, to the squad unit there, detective unit.

12 Q You are a detective there, is that correct?

13 A Yes.

14 | O On F

15 detective in the 90 Precinct?

100 200 300 400 500 600 700 800 900 1000

involved in an investigation into the death of an individual by the name of Abraham Pollack?

20 A Yes, sir.

21 Q And, Detective, was it your case or were you an
22 assisting detective?

23 A That was my case with Detective Gereciano from
24 the homicide unit.

25 THE COURT: Who caught the case?

1 Hernandez - Direct/Vecchione

2 THE WITNESS: I caught the case.

3 Q Detective Gerectiano assisted you, is that
4 correct?

5 A Yes, sir.

Q During the course of your investigation, did there come a point when you learned the name and identity of a suspect in this case?

9 A Yes, sir.

10 Q And what was the name of the suspect that was
11 ultimately arrested in this case?

12 A His name is Jabbar Collins.

13 Q And do you see Mr. Collins in court today?

14 A Yes, sir.

15 Q Would you please point him out to the Court?

A That gentleman that is sitting right there.

17 MR. VECCHIONE: Indicating the defendant,
18 your Honor.

19 THE COURT: Very well.

Q Now, Detective Hernandez, did there come a point during the course of your investigation, specifically on or about February 10, 1994, when you showed a photo array to a witness by the name of Angel Santos?

24 A Yes, sir.

25 Q Now, during the course of this investigation,

1 Hernandez - Direct/Veccione

2 Detective, how many photo arrays did you or your fellow
3 detectives put together for viewing by witnesses?

4 A Approximately six photo arrays, sir.

Q How are each of the photo arrays designated? With
a number or with a letter?

A They were designated with letters, but I added numbers to them as well.

9 Q So is it fair to say that the letters were A
10 through F and 1 through 6?

11 A Yes.

12 Q Now, on February 10, 1994, was a photo array shown
13 to Angel Santos?

14 A Yes, sir.

15 THE COURT: May I interrupt you?

16 MR. VECCHIONE: Yes, Judge.

17 THE COURT: So the photo array that was
18 designated A was also designated 1?

19 THE WITNESS: I would have to look but I
20 believe I put A, B, C and I put 1, 2, 3 on the
21 photo arrays.

THE COURT: When you look at it, could you let us know if it is A-1, B-2, and C-3 and so on?

THE WITNESS: Sure.

25 THE COURT: I am sorry. Go ahead.

1 Hernandez - Direct/Vecchione

2 Q Did you show a photo array to Angel Santos on
3 February 10, 1994?

4 A Yes, sir.

5 Q Where did you show him that photo array?

6 A That was at his home.

7 Q Which photo array on February 10 did you show
8 Mr. Santos?

9 A That was a photo array designated for
10 identification purposes E.

12 A Yes.

13 Q And prior to February 10, 1994, had you shown
14 other photo arrays to Angel Santos?

15 A Yes, sir.

16 Q If you know, just for the record, how many of the
17 photo arrays did you show Mr. Santos excluding the one
18 designated the letter E?

19 A He was shown five other photo arrays.

20 Q Now, when you showed him photo array E, first of
21 all -- I am sorry, withdrawn.

22 Let me take it back. Photo array E was made
23 up of how many photographs?

A That was six photographs, sir.

25 Q At the time you made the photo array up, did you

1 Hernandez - Direct/Veccione

2 have a gender of the individuals in mind that you were
3 looking for in terms of photos?

4 A I had the general description and pedigree
5 information on the pictures that I put together --

6 I am sorry.

A -- male black ranging in age from 18 to about 20,
22, dark complexion, short hair.

9 THE COURT: And males?

10 THE WITNESS: And males.

11 THE COURT: He asked you about the gender.

THE WITNESS: Males. I am sorry.

13 | THE COURT: Males?

14 THE WITNESS: Males.

15 Q Where did you obtain the photographs from?

A Those are department photographs.

Q Did you, in fact, select a number of photographs
to put into photo array E?

19 A Excuse me?

Q Did you select a number of photographs to put into photo array designated E?

22 A Yes, I did.

23 Q How many photographs are in photo array E?

A That is six photographs.

Q Of those six photographs, was one of the

1 Hernandez - Direct/Vecchione

2 photographs the photograph of the defendant, Jabbar
3 Collins?

4 A Yes, sir.

Q Now, when you made up the photo array, in which position did you put the photograph of Mr. Collins?

7 A I put it in position No. 2.

8 Q When you made up the photo array, where was it
9 made up?

A It was made up at the station house, at my office.

11 Q Was that in the presence of any of the witnesses
12 that you later showed the photo array to?

13 A No.

14 Q And on the photo array was it designated by either
15 letter or number the position of the each of the
16 photographs?

17 A By number.

18 Q And in which position was the defendant's
19 photograph placed?

A That was position No. 2.

Q Where is photographic array E today?

22 A I have it here, sir.

23 Q May I see it?

24 MR. VECCHIONE: Your Honor, perhaps we can we
25 deem it marked at this point so that we don't --

1 Hernandez - Direct/Veccione

2 THE COURT: Yes.

6 THE COURT: Deem it marked.

7 Let me say this. All of our exhibits at the
8 hearing will be deemed marked and Mr. Gallo will
9 keep track of them, because if Mr. Harrison or you
10 intend to offer them later on, they will not have
11 any markings on them.

12 MR. VECCHIONE: Thank you Judge.

13 (People's Exhibit 1 was deemed marked for
14 identification.)

15 Q Will you look at the photo array that has been
16 deemed marked People's 1 for identification at this point,
17 which is the photo array that you have designated E. Would
18 you take a look at it.

19 Is it in the same condition as the time when
20 you showed it to the witness, Angel Santos?

21 A Yes, sir.

Q Are there six photographs made up of -- I am
sorry. Is the number of photographs the same as when you
showed it to Angel Santos?

25 A Yes.

1 Hernandez - Direct/Veccione

2 Q Is the photograph of Mr. Collins in the same
3 position as when you showed it to Mr. Santos?

4 A It is in the same position, sir.

5 MR. VECCHIONE: Your Honor, at this point I
6 would offer the photo array designated E by the
7 detective as People's 1 for purposes of the
8 hearing.

9 MR. HARRISON: May I have one minute, your
10 Honor, please.

11 THE COURT: Of course.

12 | (Pause)

13 MR. HARRISON: No objection, your Honor.

14 THE COURT: Deemed marked People's 1.

15 Go ahead, Mr. Vecchione.

16 (People's Exhibit 1 was deemed marked in
17 evidence.)

18 Q Detective, when you showed the photograph to Angel
19 Santos, did you tell him that you were coming to his home?

A No, sir, I didn't.

21 Q When you got there, what did you tell him before
22 showing him the photo array?

23 A I told him we had a photo array to show him in
24 regards to the investigation that we were conducting.

25 Q Which was what investigation?

1 Hernandez - Direct/Vecchione

2 A The homicide investigation with the landlord of
3 the building of Mr. Abraham Pollack.

4 Q Had you talked to Mr. Santos about the homicide
5 and what he had allegedly seen prior to going to his home
6 to show him the photo array?

7 A On that day, sir?

8 Q No, not on that day. Prior to that day.

9 A Yes.

10 Q When you showed him the photo array, what if
11 anything did Mr. Santos say?

12 A We re-interviewed him briefly at that moment to
13 get a synopsis of what he had seen.

14 Q What I am asking you is -- excuse me for
15 interrupting.

16 A Okay.

17 Q -- what did he say about the photographs when you
18 showed them to him?

19 A He looked at the photographs and he identified
20 photograph No. 2.

21 Q No. 2 is whom?

22 A Being that of Jabbar Collins.

23 Q What did he say, if anything, when he identified
24 photograph No. 2?

25 A He said, "that was the individual I saw running

1 Hernandez - Direct/Veccione

2 past the furniture store as I called the police."

3 Q Now, did you ask him in any way to designate with
4 a signature of some sort the photograph that he chose?

5 A I asked him to sign the photograph and he refused,
6 sir.

7 Q Okay. Did there come a point later in the
8 investigation, specifically February 22, 1994, when you
9 showed a photographic array to another witness by the name
10 of Adrian Diaz?

11 A Yes, I did, sir.

Q Which photo array did you show to Adrian Diaz?

13 A I showed him the photograph array designated as E.

Q The same one that is in evidence?

15 A Yes.

16 Q The same one you showed to Angel Santos, is that
17 correct?

18 A Yes.

19 Q Where did you show the photo array to Adrian Diaz?

20 A I went to his place of employment.

21 Q What did you say to Mr. Diaz when you went to his
22 place of employment with the photo array, if anything?

23 A I told him I had a photo array, some photographs
24 to look at, and see if you recognize someone in there.

25 O Just curiously, Detective, where did Mr. Diaz

1 Hernandez - Direct/Vecchione

2 work? What type of location is what I am asking.

3 A In the meat department in a supermarket.

4 Q And did you show him the photographs?

5 A Yes, I did.

Q Prior to showing him the photographs had you interviewed Mr. Diaz with respect to what, if anything, he might have seen in connection with this investigation?

A That was the first time I met the individual.

10 Q Okay. Did you talk to him about what he had seen
11 before showing him the photographs?

12 A Yes. He briefly told me what he had seen.

13 Q When you showed him the photographs, what, if
14 anything, did he say to you with respect to the
15 photographs?

16 A He looked at the photographs and he identified
17 photo No. 2.

Q And, again, was that the defendant?

19 A Yes, sir.

THE COURT: As what?

21 Q Had you moved the photographs in any way or
22 changed the order in any way before showing them to Adrian
23 Diaz?

24 A No.

25 THE COURT: He identified No. 2 as what?

1 Hernandez - Direct/Vecchione

2 THE WITNESS: As the individual that he --
3 the individual he saw coming out of the building
4 at 126 Graham Avenue.

5 THE COURT: Go ahead.

6 Q Just for the record, what was the location of the
7 homicide in this case?

A That was 126 Graham Avenue.

9 Q Now, did he say anything more about what the
10 individual -- I am sorry, withdrawn.

11 Tell us exactly what Mr. Diaz said with
12 respect to his identification of Mr. Collins on the day
13 that you showed him the photo array, the complete statement
14 -- not the complete statement but what he said with regard
15 to the photo?

16 A If I may, I would need to look at my notes for
17 that.

Q Please. If the court would permit.

19 THE COURT: Certainly, yes.

20 Q Perhaps, Judge, I can make it easier for Detective
21 Hernandez.

22 || (Witness handed document.)

23 Q Does that help you? I am sorry. Here it is.
24 Wrong one, I am sorry.

25 | What did he say when he identified the

Hernandez - Direct/Vecchione
photograph?

3 A When he identified the photo he said that was the
4 person he saw leaving the building.

5 Q And again he picked out photo No. 2?

6 A Photo No. 2.

Q In the same array, is that correct?

8 A Yes.

9 Q Had you changed in any way the photo array from
10 the point you showed it to Mr. Santos until the point you
11 showed it to Mr. Diaz?

12 A No, it has not changed.

13 Q Did there come a point, Detective, specifically on
14 March 9, 1994 -- may I have those back -- when a lineup was
15 conducted at the 90 Precinct by yourself and other
16 detectives?

17 A Yes.

18 Q And did Mr. Santos and Mr. Diaz view that lineup
19 on that day?

A Yes, they did.

21 Q Okay. First of all, tell us how Mr. Diaz and
22 Mr. Santos came to the precinct on that day.

23 A Mr. Santos was picked up by someone in the office,
24 and Mr. Diaz, I can't recall offhand how he arrived at the
25 station house.

1 Hernandez - Direct/Vecchione

2 MR. VECCHIONE: Your Honor, if I might, I beg
3 the Court's indulgence for a moment. I want to go
4 back to the photo array for Mr. Diaz for a moment.

5 THE COURT: Fine.

6 Q After showing Mr. Diaz the photo array and after
7 he picked out photo No. 2, did you ask him to sign it in
8 any way?

9 A Yes, I did, sir.

10 Q Did he, in fact, sign it?

11 A Yes, he did.

12 Q What did he sign on the photograph, if you recall?

13 A He signed it in Spanish, "carnicero," translation
14 like butcher, meat butcher.

15 Q He didn't use his name, is that correct?

16 A No, he didn't use his name.

Q On the photograph does the "el carnicero" name appear in the photo array as you look at it now?

19 A Yes.

THE COURT: It is in evidence.

21 MR. VECCHIONE: Thank you, Judge.

THE COURT: And there is a date on it I can't
make out. Can you read it?

24 | THE WITNESS: Sure.

25 THE COURT: "El carnicero" and what else does

1 Hernandez - Direct/Vecchione

3 THE WITNESS: "2/22/94, 2035 hours."

4 THE COURT: That is on the back of photo
5 labeled No. 2.

Q Now, Detective, let's go back to the lineup. Both Angel Santos and Adrian Diaz were brought to the precinct by detectives, is that correct, if you remember?

9 A Yes.

10 Q You just don't remember who, is that correct?

11 A That's correct.

12 Q Where were they kept before the lineup was
13 conducted?

14 A They were kept in separate rooms on the second
15 floor.

16 Q And was the defendant in the precinct at the time
17 that the witnesses were brought into the precinct?

18 A The defendant was in the precinct at that time

Was or was not? I am sorry. I didn't hear you.

20 A The defendant -- what was the question again,
21 sir?

THE COURT: Was he in the precinct or not.

23 Q Was he in the precinct when the witnesses were
24 brought into the precinct?

25 A The defendant was in the precinct.

1 Hernandez - Direct/Vecchione

2 Q Okay. Where was he kept?

A He was kept in the interview room.

4 Q And the interview room of the precinct is on what
5 floor of the precinct?

6 A That is on the second floor also, sir.

7 Q The room where the two witnesses were kept, what
8 floor was that on?

A That was on the second floor also.

10 Q Were they in the same area of the building or
11 different areas?

12 A They were in a separate part of the building,
13 different sides.

14 Q The witnesses were kept on one side of the
15 building, and the defendant was kept in another side of the
16 building, is that right?

17 A That's correct.

18 Q The rooms where the witnesses were kept, did they
19 have doors?

A They had doors.

Q Was there any kind of windows or glass in those doors that they could see out?

23 A They have glass, frosted, where you cannot see
24 out.

25 Q The room where the defendant is kept, does that

1 Hernandez - Direct/Veccione

2 room have a door?

3 A Yes, it does.

4 Q Does it have some sort of glass or anything that
5 would allow someone to look into?

A It has a small glass on the door where someone can look into, about that size (indicating).

8 Q Prior to the lineup was the defendant in any way
9 displayed to the witnesses?

10 A No, sir.

11 Q Did the witnesses, as far as you could determine,
12 see the defendant before the viewing the lineup?

13 A No, sir.

Q Now, were fillers obtained for the lineup?

15 A Yes.

Q Were they obtained by you or other detectives?

17 A By other detectives.

18 Q Before the detectives went out to get those
19 fillers, were they shown either the defendant or a
20 photograph of the defendant so that they would know what
21 type of individuals they were looking for?

A They looked at the defendant.

23 Q Okay. And how many fillers were brought back to
24 the precinct?

25 A They brought back five fillers, sir.

1 Hernandez - Direct/Vecchione

2 Q Did you see the five fillers?

3 A Yes, I did.

4 Q Where were they brought?

5 A They were brought into the station house from the
6 back of the station house.

7 Q And what room were they ultimately put into?

8 A Ultimately they went into the lineup room.

9 Q Before they were in the lineup room, in any way
10 were they displayed to the witnesses?

11 A No, sir.

12 Q Were the witnesses in any way able to see the
13 fillers before they were placed in the lineup?

14 A No, sir.

15 Q When they were placed in the interview room, where
16 in the interview room were the fillers and the defendant
17 ultimately placed?

18 A Well, the defendant chose the position where he
19 wanted to sit.

20 Q Well, no, I will get to that in a second. I am
21 talking about when you look through the glass, the front
22 door of the interview room.

23 A Yes.

24 Q Were you able to see where the witness -- I am
25 sorry -- where the fillers and the defendant were seated or

1 Hernandez - Direct/Vecchione

2 were they off to either side of the door?

3 Do you understand my question?

4 A No, no, I don't, sir.

5 THE COURT: When you look through that
6 one-way mirror.

7 MR. VECCHIONE: No, no, Judge. I am not
8 asking that.

9 Q When you walk into the room and you look into the
10 front door of the room --

11 A Right.

12 Q -- were the fillers off to your right, your left
13 or in front of you?

14 A Oh, they are to my left.

15 Q That is what I am asking. If someone were to look
16 in that door, they would not be able to see the people who
17 were sitting in the interview room, is that right?

18 A No. Maybe the last guy at the end.

19 THE COURT: Was the window open or is there a
20 curtain on it or --

THE WITNESS: No. That is the window to the door.

23 THE COURT: That is what he is talking about,
24 the window in that door. Could they see through
25 that window as they walked into that corridor in

1 Hernandez - Direct/Veccione

front of the room? Is that your question?

3 MR. VECCHIONE: No, Judge, it is not. If I
4 may.

5 Q If someone were to look through the door of that
6 room as the filler sat and the defendant were sitting
7 there, before the lineup was conducted --

8 A Right.

9 Q -- are you able to see the fillers and the
10 defendant, is what I am asking you?

11 A You are able to see the fillers and the defendant
12 as you get close to the door and window.

13 Q The glass for the people viewing that lineup is in
14 a completely different position, is that correct?

15 A That is in a different position, a small enclosed
16 hallway, two doors, with the shade down.

17 Q That has a shade down, is that correct?

18 A Yes.

19 Q The witnesses who were to view the lineup, were
20 they brought to the little corridor where the viewing glass
21 was or were they brought to the front door to look in the
22 room?

23 A No. They were brought in through the back into
24 the small corridor.

Q In that room, what kind of viewing glass is

1 Hernandez - Direct/Veccione

2 | there?

3 A That's the two-way mirrored glass.

4 Q When they were brought in, was that mirror somehow
5 covered or was it open?

6 A That is covered.

7 Q Now, before you brought the witnesses in, did you
8 ask the fillers and the defendant -- I am sorry,
9 withdrawn.

10 Before you brought the witnesses in, did you
11 ask the defendant to place himself in the lineup?

12 A Yes, I did.

13 Q What did you say to him?

14 A I asked Mr. Collins, you know, that he can choose
15 where he wanted to sit.

16 Q By the way, was he represented by counsel at that
17 time?

18 A Yes, he was, sir.

19 Q And what position did he choose?

A He chose position No. 2.

21 Q And what card number did he hold?

22 A He held card No. 2.

23 Q Was it solely his choice to pick

24 | and to choose card No. 2?

25 A Yes, sir.

1 Hernandez - Direct/Vecchione

2 Q Did you in any way influence him to do that?

3 | A NO.

4 Q When he chose position No. 2 and card No. 2, were
5 the other cards then given to the fillers who were in the
6 lineup?

7 | A Yes.

8 Q The number cards I am talking about.

9 A Yes.

10 Q As you look through the two-way glass and see the
11 fillers and the defendant, was the defendant in position
12 No. 2 going from left to right?

13 A The numbers are going from left to right, 1 all
14 the way to 6.

15 Q Who was the first witness to be brought into the
16 room?

17 A The first witness was Adrian Diaz.

18 Q When Mr. Diaz was brought to the precinct, did you
19 have a conversation with him?

20 A I explained to Mr. Diaz that we had some -- we had
21 a lineup that we were conducting, and we wanted him to view
22 that lineup to see if he recognized anyone.

8. Did you tell him in connection with what incident?

24 A In regards to the homicide investigation that we
25 were conducting.

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Q Okay. What did you say to him when you brought him into the viewing room?

4 A I just told him to just take his time, look very
5 carefully, look at everyone there. If you see anyone you
6 recognize, just tell me the number.

7 Q Did you then let him look through that two-way
8 mirror?

9 A Yes, sir.

10 Q Before doing that you lifted the shade up,
11 obviously?

12 A Yes.

13 Q When he looked through, what if anything did he
14 say?

15 A He looked at all the fillers at that point and he
16 identified No. 2

17 Q What did he say when he identified No. 22

A He says, "No. 2 is the one that I saw coming out
of the building." I would have to look in my notes to be

20 THE COURT: Go ahead. Sure. Just tell us
21 what you are looking at

THE WITNESS: Sure.

23 MR. VECCHIONE: Just for the record, I am
24 handing Detective Hernandez his lineup report, the
25 second page.

1 Hernandez - Direct/Vecchione

2 Q Detective, is that what you are looking for?

3 What did he say?

4 A All right. Mr. Diaz says, he's the guy -- "No. 2,
5 he's the guy who came out of the building holding a gun and
6 he put in his back. Then he ran up Boerum, made a right,
7 then another right into a lot."

8 Q Who was in position No. 2?

9 A Mr. Jabbar Collins.

10 Q Okay. What did you do with Mr. Diaz after he
11 viewed the lineup?

12 A Mr. Diaz was taken into a different room at that
13 point.

14 Q By the way, did you take a photograph of the
15 lineup that was viewed by Mr. Diaz?

16 A Yes, I did.

Q Do you have that in court today?

18 A Yes, I do.

19 Q Could you look at it?

20 MR. VECCHIONE: Could we have it deemed
21 marked for identification as People's 2?

22 THE COURT: No. 2.

23 (People's Exhibit 2 was deemed marked for
24 identification.)

Q Detective, could you look at it?

1 Hernandez - Direct/Veccione

2 A Yes, sir.

3 Q Does the photograph appear to be a fair and
4 accurate representation of the lineup as it was viewed by
5 Mr. Diaz on March 9, 1994?

6 A Yes, sir.

7 MR. VECCHIONE: I would ask that it be deemed
8 marked into evidence as People's 2.

THE COURT: Okay.

10 MR. VECCHIONE: Can we just separate the two
11 photographs. I just want to take the five off so
12 we don't get the whole folder.

13 THE COURT OFFICER: Do you want to remove the
14 papers that it is stapled to?

15 MR. VECCHIONE: You don't have to. We can
16 just show him the lineup report.

17 THE COURT OFFICER: Okay.

18 THE COURT: Go ahead, deemed -- any
19 objection?

20 MR. HARRISON: No, your Honor.

21 THE COURT: All right. Deemed marked No. 2.

22 (People's Exhibit 2 was deemed marked in
23 evidence.)

24 Q When Mr. Santos was brought into the precinct, did
25 you say anything to him before he viewed the lineup?

1 Hernandez - Direct/Vecchione

2 A The only thing we told Mr. Santos is that he would
3 be viewing a lineup.

4 Q And after Mr. Diaz finished viewing the lineup,
5 did you then display the lineup to Mr. Santos?

6 A Yes, I did.

7 Q When he was brought into the viewing room, what if
8 anything did you say to him?

9 A I explained to Mr. Santos that he would be viewing
10 six individuals, to take his time and look at them very
11 carefully and see if he recognizes anyone involving the
12 case that we were investigating at that time.

13 Q Between the time that Mr. Diaz viewed the lineup
14 and Mr. Santos viewed the lineup, did the defendant change
15 his position in any way?

16 A No, sir.

17 Q Was he given an opportunity to do that?

18 A Um --

19 If you can recall.

20 A I can't recall that.

21 Q But he chose position No. 2 and remained in
22 position 2, is that right?

23 A Yes, sir.

24 Q Did Mr. Santos view the lineup from the same
25 position as Mr. Diaz?

1 Hernandez - Direct/Vecchione

2 THE DEFENDANT: Yes.

3 Q What if anything did Mr. Santos say when you
4 lifted the curtain?

5 A Mr. Santos looked at the lineup. I would have to
6 look at my notes to see what he said.

7 THE COURT: Okay.

Q Did he choose a particular individual?

9 A Yes, he did.

Q What number did he choose?

11 A No. 2.

12 Q Do you know what he said when he chose No. 2?

13 A I would have to look at my notes.

14 Q All right. Second page again.

15 A All right. Angel Santos, he said, he stated,
16 "No. 2, the guy No. 2, he's the one I saw run by the
17 furniture store."

Q And who was in position No. 2?

19 A That was Mr. Jabbar Collins.

20 Q Between the time that Diaz viewed the lineup and
21 the time that Santos viewed the lineup, did they have any
22 contact with each other?

23 A No, sir.

24 Q Did you take a photograph of the lineup as viewed
25 by Mr. Santos?

1 Hernandez - Direct/Veccione

2 A I just took one set of pictures for the first
3 lineup.

4 Q So the lineup did not change in any way from the
5 point, from the time that Diaz saw it until the time Santos
6 saw it, is that correct?

7 A No, sir.

8 Q The photograph that you showed to the Court, which
9 has been marked as People's 2, is the same -- the people in
10 the positions are exactly the same from when Diaz viewed it
11 to the point --

12 A Yes, sir.

13 Q -- until Mr. Santos saw it?

14 A Yes, sir, they are both the same.

15 MR. VECCHIONE: I have no further questions.

16 THE COURT: Mr. Harrison.

17 MR. HARRISON: Can I have one minute, your
18 Honor?

19 THE COURT: You said you conducted two
20 lineups?

21 THE WITNESS: Yes.

THE COURT: One for Diaz and one for Santos?

23 THE WITNESS: Yes.

24 THE COURT: The same six people?

25 THE WITNESS: The same six people.

1 Hernandez - Direct/Veccione

2 THE COURT: One other question.

3 You said something about having six photo
4 arrays.

THE WITNESS: Yes.

6 THE COURT: And the one you showed these
7 witnesses was E, and if you look there is a little
8 number 5 under E?

9 THE WITNESS: Right.

10 THE COURT: Was Mr. Collins' picture in any
11 of the other five?

12 THE WITNESS: No, sir.

13 THE COURT: Even though you said you showed
14 one of the witnesses five other lineups,
15 Mr. Collins' picture --

16 THE WITNESS: Five other arrays.

17 THE COURT: -- five other photo arrays,
18 Mr. Collins was in not in any of those pictures?

19 THE WITNESS: No, sir.

20 THE COURT: There were six different people
21 in those pictures?

22 THE WITNESS: Six different people in each
23 array.

24 THE COURT: Mr. Harrison, go ahead.

25 MR. HARRISON: Thank you, your Honor.

1 Hernandez - Cross/Harrison

2 | CROSS-EXAMINATION

3 BY MR. HARRISON:

4 Q Detective, what is your name?

5 A I am Detective Jose Hernandez.

6 Q And your shield number is 2212?

7 A 2212.

Q That is correct?

9 A Yes.

10 Q What was the date you became involved in the
11 investigation of this alleged incident?

A That is on February 6, sir, of 1994.

13 Q That was the date that this alleged incident
14 occurred, is that correct?

15 A Yes, sir.

16 Q And on the date that this alleged incident
17 occurred, a good faith approximation, what time did the
18 shooting occur? What time did this occur? One o'clock?

19 THE COURT: Approximately what time was the
20 shooting?

21 THE WITNESS: Approximately 11:40, 11:45.

22 THE COURT: A.m.?

23 THE WITNESS: Yes.

24 THE COURT: Or p.m.?

25 THE WITNESS: A.m.

1 Hernandez - Cross/Harrison

2 THE COURT: Go ahead.

3 Q What time did you arrive at the crime scene?

4 THE COURT: Mr. Harrison, this is a Wade
5 hearing.

6 MR. HARRISON: I understand.

7 THE COURT: We are not going into what
8 happened at the scene. We are not going into the
9 evidence in the case. That is for a jury to
10 decide. I am here to determine one thing:
11 whether or not the police did anything to taint
12 the lineup which would cause these people to pick
13 out somebody because of something done by the
14 police officers or anyone on their behalf. Is
15 that clear?

16 MR. HARRISON: I understand.

17 THE COURT: Well, this is not a pretrial.

18 MR. HARRISON: Yes, your Honor.

19 THE COURT: Go ahead.

20 Q Now, there came a time -- how many lineups did you
21 conduct in this case?

22 A On which date, sir? There were two separate
23 lineups.

24 Q And let's talk about the first lineup. There was
25 the first lineup?

1 Hernandez - Cross/Harrison

2 A Yes.

3 Q Is that correct?

4 | A Yes.

5 Q And do you recall what date that first lineup
6 was?

A That was February 18.

8 Q At that first lineup a lawyer was present, is that
9 correct, if you know?

10 A I can't recall whether the lawyer was present for
11 that first lineup.

THE COURT: Who viewed the first lineup?

13 THE WITNESS: Several people viewed that
14 lineup, and negative results on that.

THE COURT: Was Mr. Collins in that lineup?

16 THE WITNESS: Yes, sir.

17 THE COURT: Go ahead.

18 Q Now, there came a time tha

19 is in question at the Wade hearing today, right?

10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000

— with some more will make things conducted.

2000, 2001.

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And there were two witnesses to that lineup, is

1 Hernandez - Cross/Harrison

2 | that correct?

3 A Yes, sir.

4 Q Did you pick up those two witnesses?

5 A No, sir.

6 Q Do you know who picked them up?

7 A Not offhand, sir.

8 Q What time did you meet the two witnesses?

9 A What time did I meet the two witnesses?

10 Q Let me rephrase it. Did there come a time the two
11 witnesses arrived at the police station?

12 A Yes.

13 Q And approximately what time did they arrive at the
14 police station?

15 A I am not sure about the time that they arrived.

16 Q Did you see them arrive?

17 A I saw that they were there.

18 Q And when you saw them, were they together in the
19 same room or were they in different rooms?

20 A No. They arrived at different times and they were
21 in different rooms.

Q Now, there came a time you showed a photo array to each witness, is that correct?

24 A Yes, sir.

25 Q And when you showed the photo array to each

1 Hernandez - Cross/Harrison

2 witness, let's start with -- who was the first witness you
3 showed the array to?

4 A The first witness?

6 A All right.

7 THE COURT: You are talking about photo array
8 designated E?

9 MR. HARRISON: That's correct.

10 Q Designated E.

11 THE COURT: People's 1?

12 A All right. Angel Santos I showed the photo
13 array.

14 Q And in that photo array Mr. Collins was positioned
15 in picture No. 2, is that correct?

16 A Yes, sir.

17 Q And in that photo array he had on a tank top, if I
18 may use, is that the correct phraseology or description of
19 that item of clothing?

A He had a tank top in that photo array?

22 A I would have to look in that photo array. I
23 didn't notice it.

THE COURT: Where it is? Look at it.

25 A I have it buried over here.